

MINUTES
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, October 20, at 9:00 a.m.
State Capitol Building, Room 303
Helena, MT

PRESENT: Governor Brian Schweitzer, Attorney General Mike McGrath, Secretary of State Brad Johnson, and Superintendent of Public Instruction Linda McCulloch

ABSENT: Auditor John Morrison

Ms. McCulloch moved for approval of the minutes from the August 18, 2008, meeting of the Board of Land Commissioners. Seconded by Mr. Johnson. Motion carried unanimously.

ACTION ITEMS

1008-1 PROPOSED SETTLEMENT – STATE OF MONTANA, DNRC & STATE BOARD OF LAND COMMISSIONERS v NORTH SHORE DEVELOPMENT, LLC, ET AL (DV-06-611C)

Ms. Sexton stated this proposed settlement is in regards to the ownership of the logs that lie at the bottom of state-owned Flathead Lake. It also lays out a plan if North Shore Development elects to apply for a land use license (LUL) to salvage logs. Settlement terms include:

- ♦ North Shore owns all the logs that are branded with a “Circle N”.
- ♦ All other salvageable logs belong to the state.
- ♦ North Shore would be granted exclusive salvage rights through a 10-year LUL.
- ♦ Activities will be limited to an area north of a line between Caroline Point and Long Beach.
- ♦ North Shore would limit operations to five acres at any given time.
- ♦ North Shore would pay the DNRC \$21,000 annually for salvage rights under the LUL.
- ♦ The state would be paid on a five percent gross sliding scale for unmarked logs.
- ♦ North Shore must comply with MEPA and all other permitting and environmental regulations. The LUL would not be issued until MEPA and other permitting processes are complete.

David Zabel, North Shore Development attorney, stated that during discovery and the litigation process, logging contracts were produced showing that the Somers Lumber Company had used the “Circle N” brand during their operations from early 1900 into the 1950s. The proposed settlement resulted from this determination, as one of the concerns of the district court was how North Shore could establish entitlement to the logs. The settlement also provides the framework for future permitting. North Shore believes environmental concerns can be addressed by not engaging in operations near the shoreline where the logs have become part of the shoreline. North Shore would concentrate on submerged logs with no established vegetation. The accumulated silt would return to the lake bottom within minutes after the logs were raised with float bags.

Motion made by Mr. Johnson to approve the proposed settlement. Seconded by Mr. McGrath.

Governor Schweitzer asked as to the condition and environment of the submerged logs?

Joseph Bakker, the diver who inspected the logs, stated that all the logs are in good condition. Size ranges from 16 inches to 4 feet in diameter. Some logs are completely buried, rendering them unsalvageable. Some are five to ten percent buried, and some rest on

the lake bed, or are stacked atop each other (100 feet or more from the shoreline and submerged from between 15 to 50 feet).

Governor Schweitzer asked if the logs that are completely buried will be dismissed from consideration?

Mr. Bakker said yes.

Governor Schweitzer asked what type of vessel has the capacity to salvage the logs?

Mr. Zabel stated the advised salvage option is to send divers to attach ropes to the logs and use float-lift bags to raise the logs. The logs would then be attached to a pontoon boat to pull them to the shoreline.

Governor Schweitzer asked if the salvage proposal was still viable, given the current, historically low price of timber?

Mr. Zabel said that North Shore believes salvage still is an economically viable action.

Governor Schweitzer asked for confirmation that this proposal is only to allow the process to move forward; and that final approval (as well as the \$21,000 LUL fee) would not commence until all environmental concerns were addressed and resolved?

Ms. Sexton confirmed that all MEPA and permitting processes must be completed before the agreement became effective, which would require additional approval from the Land Board.

Mr. McGrath clarified that this proposed settlement is specific to log ownership.

Motion carried unanimously.

1008-2 TIMBER SALES:

1008-2A and 1008-2B were considered as a block. Ms. Sexton gave a brief overview of each.

A. ANTELOPE CREEK (LIMITED ACCESS)

Antelope Creek is a limited access sale because the adjoining private landowners have granted access to one individual for the sole purpose of the timber sale. Estimated sale volume is 150 MBF, which will be sold at the negotiated rate of \$18,000.

B. LION MOUNTAIN

Lion Mountain is a small fuels reduction timber sale of 507 MBF in a wildland-urban interface near Kalispell.

Motion made by Ms. McCulloch for preliminary approval of 1008-2A and 1008-2B. Seconded by Mr. Johnson. Carried unanimously.

1008-3 PRELIMINARY APPROVAL FOR SALE OF LAND BANKING PARCELS:

1008-3A and 1008-3B were considered as a block. Ms. Sexton gave a brief overview of each.

A. GARFIELD COUNTY

The two 640-acre parcels in Garfield County near Jordan are currently leased for grazing. They have below average production and no public access. One was nominated by the lessee and the other by the DNRC Eastern Land Office.

B. ROSEBUD COUNTY

The parcels nominated in Rosebud County comprise ten percent of the state's acreage in the county. Most parcels were nominated by the lessees and have below average production

Motion made by Mr. McGrath for preliminary approval of the sale of 1008-3A and 1008-3B. Seconded by Ms. McCulloch. Carried unanimously.

1008-4 RIGHTS-OF-WAY:

1008-4A and 1008-4B were considered as a block. Ms. Sexton gave a brief overview of each.

A. RIGHT-OF-WAY APPLICATIONS

The applications are for historic access and utilities easements in Beaverhead, Carter, Choteau, and Fergus counties.

B. SEPTIC PERMIT APPLICATION DEED RESTRICTION

This application is for a septic permit for the DNRC Missoula Unit, which received legislative approval in 2007 to expand their facilities. The Missoula City-County Board of Health requires a waiver of protest for future connection to the public sewer once the connection becomes available. Approval of the deed restriction will act as a waiver and bind the DNRC to connect to the public sewer within 180 days after it becomes available.

Motion made by Mr. Johnson for approval of 1008-4A and 1008-4B. Seconded by Ms. McCulloch. Carried unanimously.

INFORMATIONAL ITEMS

1008-5 OTTER CREEK UPDATE

Monte Mason, Minerals Management Bureau Chief, gave an update on the appraisal and leasing review process for the Otter Creek coal tracts.

There are two methodologies for appraising the coal value:

- ♦ Income Approach - the mine project (and thereby the mining leases) is evaluated through a net present value analysis, taking into account estimated capital, operating and reclamation costs, coal production, and prices over the life of the mine.
- ♦ Comparable Sales Approach - the mining leases are valued based on the price received for other coal leases in the area. This approach is similar to appraising the value of a house by examining prices for other homes in the area.

The DNRC has, or is, undergoing the following steps:

- ♦ [COMPLETED] Updating the mine model – i.e. a model of the physical mining sequence. This model is expanding on the work that was done in 2005.

- ♦ [COMPLETED] Update and expand the mine cost model (meaning the financial model that overlays the mine sequence model).
- ♦ [IN PROGRESS] Develop a coal transportation costs model (not included in the 2005 study) for:
 - ♦ mine spur road, loop road, and load out facility; and
 - ♦ Tongue River Railroad from spur to Miles City.
- ♦ Market price analysis
- ♦ [IN PROGRESS] Income approach value - generated using the various components of the previous bullet points to determine the value of the state share of the Otter Creek coal.
- ♦ Develop comparable coal lease sale data analysis by:
 - ♦ [COMPLETED] aggregating the available data; and
 - ♦ [IN PROGRESS] adjusting and normalizing the data to be representative of Otter Creek.
- ♦ Generate comparable sales coal lease value.
- ♦ Reconcile income and comparable sales valuations and generate the formal appraisal.

Mr. Mason stated this preliminary appraisal will be brought before the Land Board in December 2008. Then, as required by statute, the preliminary appraisal will be open for public comment before the final appraisal (which will be brought before the Land Board in February 2009).

Mr. Johnson asked if Great Northern Properties, LLP was involved in the proceedings?

Mr. Mason stated that there has been ongoing communication regarding the DNRC's process and Great Northern Properties' planning.

1008-6 FOREST INSECTS AND DISEASES ON MONTANA'S SCHOOL TRUST LANDS

Amy Gannon, Forestry Division Entomologist, and Tim Spoelma, Forest Management Bureau Silviculturist, gave a presentation on forest Insects and diseases.

Ms. Gannon discussed invasive insects and diseases common to Montana, which include:

- ♦ Mountain pine beetle:
 - ♦ kills trees by mass attack;
 - ♦ attacks all species of pine;
 - ♦ attacks occur mid-July, but the trees do not turn red until the following year;
 - ♦ attacks the circulatory system and introduce a fungus that kills the tree, or kills the tree outright; and
 - ♦ life cycle is climate sensitive.
- ♦ Douglas-fir beetle:
 - ♦ attacks only Douglas-fir, and is closely linked to root disease;
 - ♦ prefers mature or decadent trees;
 - ♦ attacks tend to follow fire or wind events;
 - ♦ attacks occur in early spring, but the trees do not fade until the following year; and
 - ♦ attacks the circulatory system and introduce a fungus that kills the trees, or kills the trees outright.
- ♦ Western spruce budworm:
 - ♦ attacks Douglas-fir, spruce, and grand fir;
 - ♦ defoliates trees; and
 - ♦ damage predisposes trees to Douglas-fir beetles.

The current estimate for affected acreage in Montana for 2007 includes:

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- ♦ 612,109 acres from mountain pine beetle (preliminary 2008 data indicates an increase of twelve times);
- ♦ 22,034 acres from Douglas-fir beetle; and
- ♦ 495,884 acres from western spruce budworm.

Ms. Gannon presented a graph of the population trends of the pine beetle, which indicated a decrease activity during years with heavy snow, but an overall steady increase.

Over the last 25, years Colorado and British Columbia have lost over 20 million acres of lodge pole pine.

Insect infestation is concentrated in the following areas:

- ♦ Butte and Helena areas – mountain pine beetle;
- ♦ Northwestern Montana – Douglas-fir beetle; and
- ♦ Helena area and south-central Montana – western spruce budworm.

Factors that contribute to pine beetle infestation are:

- ♦ fire suppression;
- ♦ weather; and
- ♦ past harvest practices.

Management strategies for bark beetle infestation include:

- ♦ thinning stands to promote vigor, enhance sap pressure, and increase airflow;
- ♦ removing brood trees;
- ♦ selecting susceptible trees; and
- ♦ creating a mosaic of species and ages.

Management strategies for western spruce budworm include:

- ♦ thinning stands;
- ♦ creating single structures, which interrupts dispersal; and
- ♦ diversifying tree species.

Mr. Spoelma stated that in 2007, a relatively low percentage of trust land was affected. Most damage to trust land has come from the western spruce budworm and is concentrated in the areas managed by the DNRC Dillon, Clearwater, Anaconda, and Helena Units. He referenced a photo taken from the Dillon unit area that showed defoliation. A timber sale is being prepared for that area.

Mr. Spoelma stated that the DNRC uses a model to assess the risk of insect outbreak on trust lands in order to assign a hazard rating for each stand. The model results indicate many stands are at risk of being attacked by multiple insects. There has been a substantial increase statewide, mostly on public lands. However, 95 percent of public forest land is owned by federal agencies, and the current mortality largely reflects the situation on federal lands. One hundred percent of the DNRC timber sales planned out of the DNRC Southwestern Land Office for fiscal year 2009 are insect salvage sales to remove 18 million board feet over 1685 acres.

Benefits to salvage harvesting include:

- ♦ relative surety that the problem is adequately addressed;
- ♦ a faster return of the land to a productive status; and
- ♦ recovering value for the trusts that would otherwise be lost.

Disadvantages to salvage harvesting include:

- ♦ reactive rather than proactive;
- ♦ “last resort”;

- ♦ an attempt to minimize financial loss; and
- ♦ the value recovered is less than the value of live trees.

Another means of addressing insect infestations is sanitation harvesting. That is done in an area that has some infestation, but also healthy trees. It can curb the rate of insect spread and maintain a forest onsite, but is often costly and only a temporary solution that requires repeat entries.

Mr. Spoelma stated that changing environmental conditions are having an impact on the nation's forests, and the outcomes of those changes are uncertain. He cautioned that in the face of uncertainty and change, the best option for managing healthy stands is to manage for flexibility. This matches the management philosophy on trust lands to promote healthy and diverse forests, because healthy and diverse forests are both flexible and resilient. Proper management allows DNRC to be proactive rather than reactive. The DNRC manages for healthy and diverse forests by using treatments that emulate natural disturbances, emphasize diversity, and promote growth and vigor. The DNRC reacts quickly to salvage needs, but the size and scope of the current infestation problem make it difficult to address all needs in timely manner. Mr. Spoelma also noted that a viable timber industry is essential to accomplishing management goals, and it is important to sustain the mills Montana currently has.

Mr. Johnson thanked Ms. Gannon and Mr. Spoelma and asked to what extent the lack of adequate management in federal national forests exacerbates the infestation problem on state trust lands?

Mr. Spoelma said that he cannot quantify the extent, but that lack of federal management does increase the risk to trust land.

Ms. McCulloch asked what the infested areas might look like in the future?

Ms. Gannon answered that areas infested by western spruce budworm will refoliate over time, but vast numbers of trees in the areas infested by beetles will die and turn red before the problem plateaus. Over time, the forests will generate new growth.

Mr. McGrath asked how the weather could curb the problem?

Ms. Gannon said that extremely cold winters and late spring frosts diminish the viability of the insects.

Governor Schweitzer asked if the size of the tree has an impact on the infestations?

Ms. Gannon said pine beetles prefer a continuous host, attacking larger trees initially, and that trees with diameters five inches or less are not susceptible.

Governor Schweitzer asked if there are precedents in other outbreak states that require all forest land owners to utilize recommended beetle mitigation practices in order to curb the spread of infestation?

Ms. Gannon said that other states do have such policies. There are currently discussions to consider if any such policies might be applicable to Montana. Pine beetles can fly up to 20 miles, so the health of adjacent or nearby forests must be considered as well. Since the current outbreak is so large in scope, even formally recommended beetle mitigation practices will not change the course of this outbreak; but there are things private and state landowners can do to address the current situation as best as possible.

Governor Schweitzer asked if any western states have been successful in encouraging the federal government to expedite the mitigation process?

Ms. Gannon answered that Colorado has had some success in this.

PUBLIC COMMENT

LINCOLN RANCH ACQUISITION (Item 908-2 – granted preliminary approval September 15, 2008)

Suzanne Wanken-McDonald asked the following questions:

- ♦ Had the Lincoln Ranch been purchased by FWP?
- ♦ Had access been granted on the west end of the property?
- ♦ Is FWP still seeking access on the east end of the property that is adjacent to her property?

Hugh Zackheim, FWP Lands Bureau Chief, stated that FWP negotiated an access easement on the west end of the property. Access would be “for all lawful purposes” with stipulations limiting the number of campsites developed. The easement resolves some of the concerns addressed by the Land Board (*see September 15, 2008, Land Board minutes*). FWP is satisfied with the access obtained, but is open to discussions regarding the side of the property adjacent to the Wanken Ranch.

STATE OF MONTANA v. STATE WYOMING UPDATE (TONGUE AND POWDER RIVER LITIGATION)

Mr. McGrath informed the Land Board that, in the United States Supreme Court case involving Montana’s dispute with Wyoming over interpretation of the Yellowstone River Compact, the Court referred Wyoming’s Motion to Dismiss to a special master who will act as a hearings examiner to make determinations regarding various facets of the litigation in order that the Court may proceed.

Motion to adjourn made by Ms. McCulloch. Seconded by Mr. McGrath. Carried unanimously.